REMARKS

The Examiner has "reopened" prosecution following Applicants' submission of a Notice of Appeal and Appeal Brief. The Examiner has cited a new patent publication to Kelly (U.S. Patent Publication No. 2001/0056397, hereinafter "Kelly"). However, the Kelly patent publication, even when considered in combination with the previously relied upon Spencer patent, does not overcome the deficiencies of the Spencer patent discussed in Appellants' earlier filed Appeal Brief, the content of which is hereby incorporated by reference in its entirety.

Reconsideration and allowance of the present application are respectfully requested in view of the following remarks. It is hoped that resolution of this application can be attained without again having to proceed through the time and expense of the Appeal process. The Examiner is invited to contact the undersigned if an Examiner interview would help expedite resolution of any outstanding issues.

Claims 1, 2 and 4-65 are pending in the present application.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 2 and 4-65 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Spencer (U.S. Patent No. 6,633,907, hereinafter "Spencer"), in view of the newly cited Kelly document .

Claim 1 recites, in part:

> reading parameters from a network database related to said network device;
> determining whether the at least one command can be properly executed on said network device based upon the parameters read; and
> executing the at least one command on said network device only if it is determined that the at least one command can be properly executed.

It is respectfully submitted that the above-recited features are not taught or suggested by the Examiner's proposed combination of Spencer and Kelly.

As noted in the Supplemental Appeal Brief dated November 20, 2007 (hereinafter, the "Supplemental Appeal Brief"), Spencer is directed to the provisioning of online services provided by an Internet Service Provider (ISP), such as web hosting, mail, news and chat services. See page 4, the first full paragraph. It does not pertain to the provisioning of network *devices*, such as servers. *Id.* Because of its different objective, Spencer does not disclose the claimed subject matter. *Id.*

Kelly is relied upon by the Examiner for its alleged teaching of reading of parameters from a network database, but fails to remedy the deficiencies of Spencer. The Examiner's proposed combination of Spencer and Kelly therefore does not disclose Applicants' presently claimed subject matter.

In rejecting claim 1, the Office Action refers to Spencer at col. 8, lines 38-57, and col. 9, lines 16-62, as allegedly disclosing reading of parameters related to the network device.

Col. 8, lines 38-57 of Spencer discloses that three service configuration objects (SCOs) 212, 214 and 216 are sequentially instantiated and perform steps required to configure their respective services with which they are associated before the next SCO is instantiated.

Col. 9, lines 16-62 of Spencer disclose that, if an error occurs during configuration, a rollback procedure can be carried out if it is determined necessary, in which each SCO is instructed to perform the reverse operations it performed during configuration. The passage further discloses that during the rollback process,

by calling the DS Access object, the SCOs receive their previous configuration information.

Neither of these passages discloses Applicants' claimed feature of reading of parameters from a network database related to the network device. During the configuration of the services, a master object and the various SCOs specified in the master object call the DS access object to obtain configuration information from the data store. See Spencer: col. 7, line 66 - col. 8, line 37. As noted in the Supplemental Appeal Brief, the data store of Spencer is used to hold information entered by the *user* who is conducting a provisioning session. See the paragraph bridging pages 4 and 5. Examples of this type of information are the name, address and billing information for an organization, and the ISP-offered services to which the organization would like to subscribe. *Id.*

There is no disclosure in Spencer of a "network database" as presently claimed. To the contrary, the data store of Spencer merely provides information entered by a *user* about a *device* on which a command is to be executed. Therefore, Spencer does not teach or suggest reading of parameters related to a network device on which at least one received command is to be executed.

Claim 1 also recites determining whether the at least one command can be properly executed based upon the above-mentioned parameters related to the network device. The Office Action again refers to Spencer at col. 9, lines 16-62, as allegedly disclosing this claimed subject matter.

As noted previously, this passage of Spencer discloses that a rollback procedure can be carried out if an error occurs during provisioning of the services. Spencer does not disclose that the determination of a rollback procedure is based

upon a parameter related to a network device. In addition, Spencer does not disclose any nexus between the rollback procedure and information stored in the data store. The data store of Spencer is merely used to hold information entered by the *user* who is conducting a provisioning session. Spencer does not disclose the data store provides information about a *device* on which a received command is to be executed.

Kelly, the newly cited document, fails to remedy the above-noted deficiencies of Spencer. The Office Action refers to paragraph 0029 of Kelly as allegedly disclosing reading of parameters from a network database.

Kelly relates to a computer-based method and system for tracking and modifying a mortgage rate. Specifically, paragraph 0029 of Kelly discloses tracking various parameters for a type of loan with a fluctuating mortgage rate. The parameters are retrieved from a database, a non-volatile media, or an external source, such as a financial web site.

The parameters in Kelly are related to a mortgage rate, or contracting terms of the loan. Examples of such parameters are initiation date of settlement, prevailing mortgage rate, and current mortgage rate of the loan. See paragraphs 0027 and 0028, for example. The Kelly document, even when considered in combination with the Spencer patent, does not disclose or suggest that the parameters are related to a network device on which a received command is to be executed, as is presently claimed. Therefore, the Kelly document fails to remedy the deficiencies of the Spencer patent.

In view of the foregoing, claim 1 is patentable. The remaining claims are patentable at least because of their dependency from claim 1.

With further regard to claims 4, 10, 11, 16-57, 60 and 62-65, the Office Action acknowledges that the combination of Spencer and Kelly does not teach or suggest the claimed subject matter, However, the Office Action concludes that the missing subject matter would have been obvious to a person of ordinary skill in the art, without providing any support for such allegation.

Applicant notes that MPEP requires that prior art references must teach or suggest all claim limitations to establish a prima facie case of obviousness. See MPEP § 2143. Since the Office Action does not identify any other prior art references that disclose or suggest the claimed subject matter that is missing from the combination of Spencer and Kelly, it fails to meet at least one of the required criteria for a prima facie case of obviousness.

Claim 6 recites that the step of determining whether the command can be properly executed is based on reading software packaging parameters. Claims 8, 9 and 12-15 depend from claim 6 and recite various detailed features of the software packaging parameters.

In rejecting claim 6, the Office Action relies upon the SCOs in Spencer as allegedly disclosing software packages. Spencer discloses that the SCOs are programming objects that are each associated with a particular online service. However, the Spencer patent does not disclose how the programming objects are stored. Since programming objects can be included in one file, and need not be stored in software packages, the programming objects of the Spencer patent do not correspond to presently claimed software packages. Accordingly, Spencer does not disclose software packages, and does not teach or suggest determining whether the

command can be properly executed is based on reading software packaging

parameters, as recited in claim 6.

In view of the foregoing, claim 6 is patentable for these additional reasons.

Claims 8, 9 and 12-15, dependent from claim 6 and reciting various detailed features

of the software packaging parameters, are patentable for these additional reasons as

well.

With regard to claim 58, the claim recites executing the command on the

network device is limited to entities having an approved access level. In rejecting

these claims, the Office Action refers to security buffering in Spencer, at col. 2, lines

4-6.

As noted in the Supplemental Appeal Brief, this disclosure does not have

anything to do with the entities, i.e., SCOs, that actually execute commands on the

device. See page 6, the second full paragraph. Rather, the security buffering

relates to the protection of servers from *users* who do not have authorized access to

those servers. *Id.* The users are not the entities that execute commands on the

devices. *Id.*

In view of the foregoing, claim 58 is patentable for these additional reasons.

Claims 60 and 61, dependent from claim 58, are patentable for these additional

reasons as well.

CONCLUSION

From the foregoing, a Notice of Allowance is respectfully requested and is
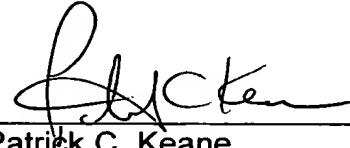
earnestly solicited.

In the event that there are any questions concerning this amendment, or the application in general, the Examiner is respectfully requested to telephone the undersigned so that prosecution of present application may be expedited.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: <u>August 1, 2008</u>   By: _____

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